LOS ANGELES BAR BULLETIN

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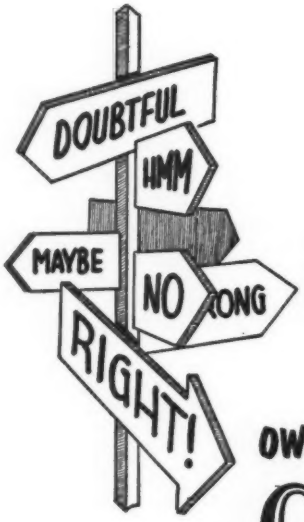
Vol. 29 July, 1954 No. 10



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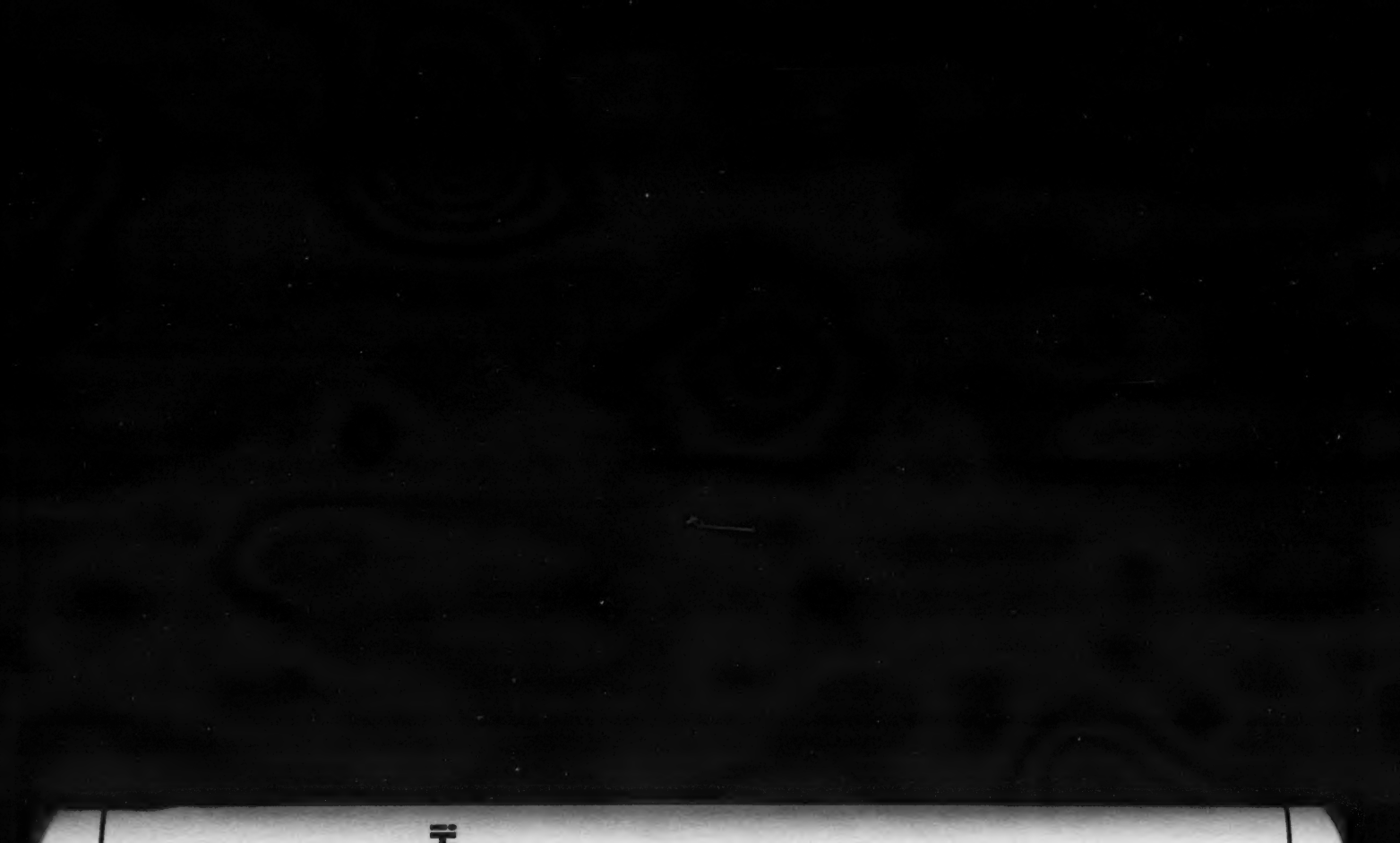


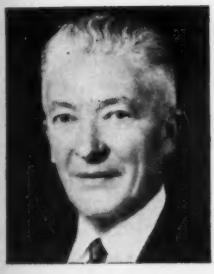
Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association, 241 East Fourth Street, Los Angeles 13, California. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.80 a Year; 15c a Copy.

VOL. 29 JULY, 1954 No. 10

The President's Page

By Harold A. Black



Harold A. Black

For nearly a decade our Association has maintained a committee whose duty it is to represent in the federal courts without compensation persons charged with criminal offenses who are unable to pay anything for legal service. While we take pride in the acceptance of this responsibility and expect to maintain this public service so long as the need for it exists, its performance has become increasingly burdensome, particularly in the last few years. During the calendar year 1953, 175 attorneys contributed their time in this work; appointments were made to 490 cases (as compared to 260 in the prior year); 308 guilty pleas were entered; and the balance of the cases were disposed of by motions to quash, dismiss, pleas of *nolo contendere* and not guilty and actual trials; 56 dismissals were obtained; 70 cases were brought to trial. Not less than 875 appearances were required. (There were 460 in 1952.) As a minimum estimate it would appear that at least 2,000 hours of attorneys' services were contributed during the year; and that figure in all probability is far too low. The maintenance of the service has also imposed a substantial load on the staff of the Association. For example, one of the assistant secretaries has

recently devoted something over 40 hours in telephoning persons on the panel of volunteers and preparing lists for the use of the Committee members.

For a number of years, each successive Board of Trustees of your Association has, after careful consideration, recommended legislation authorizing the establishment of a public defender system in the federal courts, at least in the large centers of population.

I am aware that a few of our members have taken the view that the public defender plan is a step towards socialization of the law, and that the performance of legal service for those unable to pay for it should be left entirely to the voluntary assumption of this duty by members of the bar. Each Board of Trustees for several years last past has carefully considered and rejected this argument. To the knowledge of your Board, there has been no serious agitation for the abolition of the public defender system in the state courts. No valid distinction can be perceived between the state and federal courts so far as this subject is concerned. No one is suggesting that legal service should be provided by the Government for those who need help in purely personal and private legal problems, but who are unable to pay for legal advice. The establishment of a public defender system in the federal courts would not in the slightest degree eliminate the need and the use of the Legal Aid Clinic or the Lawyers' Reference Service now being maintained. It would simply give some partial relief from the very heavy load now carried by this one committee.

During the past ten years the Judicial Conference has consistently taken the position that there is a serious need for authority in the federal judicial system to pay some moderate compensation to counsel appointed by the court for indigent defendants in criminal cases. There is almost no dissent from this broad principle among the judges and by those familiar with the administration of criminal justice in the federal courts. There has been, however, a difference of opinion as to whether this need should be met exclusively by public defenders or by compensating individual counsel appointed for particular cases. This conflict has now been resolved by a measure now pending in Congress, H.R. 398. This bill would authorize each District Court to appoint a public defender, and with one or more assistants if the number of cases required it. These officers may be full or part-time appointees depending on the volume of the work. It is left, however, optional

with the court (in large population centers with the concurrence of the judges of the Court of Appeals) to provide for compensation at a very modest rate (not exceeding $35.00 a day) to attorneys appointed by the court in particular cases to represent indigent defendants, or by the appointment of a public defender, or a combination of both methods, according to the best judgment of the District Court.

This bill, at this writing, is under active consideration by the Subcommittee of the Judiciary Committee of the House. Hearings have been concluded on it. These hearings were attended by Judge William C. Mathes, as a representative of our district. He reports that the Subcommittee appeared to be deeply interested in the bill and that, as it seems to have the unanimous support of the federal judges who appeared before the Subcommittee, as well as the Attorney General, there would appear to be no reason to believe that the Subcommittee's report will not be favorable. If you agree with the stand your Board of Trustees has taken on this matter, I hope you will cooperate by writing your Congressman and your Senators urging prompt passage of the measure.

* * *

Those of you who are planning to attend the American Bar Association Convention in Chicago this year might give some thought to going a week early and attending the short course for practicing lawyers to be offered by the Faculty of Northwestern University Law School for the period August 9th to 13th. All sessions will be held in the Law School, located on Lake Michigan, a few blocks north of the Loop. The eighteen story dormitory on the Lakeshore downtown campus will be available for the attending lawyers and their wives.

The course will not be a lecture series. It will be a series of active workshop sessions for professional study by the lawyer in general practice in the following eleven fields:

Estate Tax Planning	Tax and Corporate Problems of Small Business
International Law	State Judicial Administration
Federal Practice	Anti-Trust Law
Scientific Evidence	Property and Trusts
Accounting for Lawyers	Labor Law
Civil Liberties	

Further information about the course can be secured by writing to the Northwestern University School of Law, Lakeshore Drive and Chicago Avenue, Chicago, Illinois.

The Amorphous Concept "Void" of Corporations Code Sec. 26100

By Gilbert E. Haakh

A.B., University of California, '47; LL.B., Harvard Law School, '50; Member of State Bar of California and Massachusetts

In 1949 a California corporation obtained a closed permit from the California Commissioner of Corporations to issue 500 shares of its stock for cash to Norman or Reed or either of them. Thereafter 245 shares were issued for cash to Reed and 150 shares were issued for cash to Norman; an additional 105 shares were issued to Norman who was charged for their price on the books of the corporation. The corporation, at that time, was indebted to a sole proprietorship owned by Norman in a sum in excess of such price. At the following shareholders' meeting at which directors were elected, Reed challenged Norman's right to vote his 255 shares, on the ground that they were void because not paid for with cash as required by the stock permit. Norman nevertheless voted all of his shares, electing two of the corporation's three directors. In an action brought to contest the validity of such election, to void Norman's shares and to obtain an accounting of corporate funds, it was held that 105 of Norman's shares were void for noncompliance with the cash requirement of the stock permit, that he was not entitled to vote them in electing his slate of directors and that the election of directors was illegal: *Reed v. Norman*, 41 Cal.2d 17, 256 P.2d 930 (1953).

Since there were no facts in evidence and no findings of an agreement that the sum due from Norman for his 105 shares was credited against the amount owed him as owner of the sole proprietorship to which the corporation was indebted,[1] the court might have based its decision on the ground that these shares were not issued either for debts canceled, as permitted by Corporations Code § 1109(d), or for any of the other types of consideration listed in § 1109 as valid consideration for the issuance of fully paid shares, and were therefore void.[2] The same conclusion

[1]"It is not clear that the record in this case would support a finding that the shares in question were paid for by means of a cancellation of an indebtedness due Norman" (principal case, 41 Cal.2d at 20, 256 P.2d at 932).

[2]Cf. *Clark v. Millsap*, 197 Cal. 765, 242 Pac. 918 (1926), holding such shares void under former California Constitution, Article XII, Section 11, and Civil Code § 359.

could have been reached even if the cash payment for Norman's 150 shares were to be considered as a partial payment on all 255 shares, since neither the corporation's articles nor its by-laws authorized issuance of shares prior to full payment[3] and since the share certificates failed to state the amount remaining unpaid and the terms of payment thereof.[4]

Instead, the court chose to rest its decision on § 26100 of the Corporate Securities Law,[5] which provides in part that every security of its own issue sold or issued by a company in nonconformity with any provision in the permit from the California Commissioner of Corporations authorizing the issuance or sale of the security is void.[6]

Ever since the decision in *Eberhard v. Pacific Southwest Loan & Mortgage Corporation*[7] in 1932, however, California courts have construed the word *void* in Section 26100 of the Corporations Code to mean *voidable* at the election of a security holder not in pari delicto with the issuer.[8] The holding of the *Reed* case would seem to be a decided departure from those decisions. Three of the cases cited by the court in the *Reed* case to support its decision that the security was void[9] antedated the *Eberhard* case. In addition, none of the cases cited by the court are authority for the proposition for which they are cited:

(1) *Mannion v. Baldwin*[10] was an action brought to recover the purchase price of stock issued in consideration of the transfer to a corporation of the assets of a partnership, in contravention of the terms of a permit to sell these shares for cash only. (2) *Imperial Live Stock & Mtg. Co. v. Tracy*[11] and *Gridley v. Tilson*,[12]

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[3]Corp. Code § 1109.
[4]Corp. Code § 2405.
[5]Corp. Code § 25000-26104.
[6]Corp. Code § 26100: "Every security of its own issue sold or issued by any company without a permit of the commissioner then in effect authorizing the issuance or sale of the security is void. Every security of its own issue sold or issued by a company with the authorization of the commissioner but which has been sold or issued in nonconformity with any provision in the permit authorizing the issuance or sale of the security is void."
[7]215 Cal. 226, 9 P.2d 302 (1932).
[8]*Western Oil & Refining Co. v. Venago Oil Corporation*, 218 Cal. 733, 24 P.2d 971 (1933); *Domestic & Foreign Petroleum Co. Ltd. v. Long*, 4 Cal.2d 547, 51 P.2d 73 (1935); *Robbins v. Pacific Eastern Corp.*, 8 Cal.2d 241, 65 P.2d 42 (1937); *In re F. P. Newport Corporation, Limited*, 98 F.2d 453 (9th Cir. 1938); See, also, cases cited by Dahlquist, T. W., *Regulation and Civil Liability Under the California Corporate Securities Act*, 34 Cal.L.Rev. 543, 552, n. 34 (1946).
This line of cases was not mentioned in the briefs of the parties.
[9]*Imperial Live Stock & Mortgage Company v. Tracy*, 208 Cal. 205, 281 Pac. 50 (1929). *Gridley v. Tilson*, 202 Cal. 748, 262 Pac. 322 (1927). *People v. Stewart*, 115 Cal.App. 681, 2 P.2d 195 (1931)
[10]217 Cal. 600, 20 P.2d 678 (1933).
[11]Supra, n. 9.
[12]Supra, n. 9.

decided under the Corporate Securities Act of 1917[13] held that recovery by that corporation could not be had on notes given for stock sold under a permit to sell it for cash. (3) *Holmquist v. Kent*[14] was an action for damages or for the return of real property transferred in exchange for stock which could be sold only for cash under the terms of the stock permit. (4) *Herkner v. Rubin*[15] was an action to enforce a subscription agreement to buy shares with merchandise, contrary to the terms of the stock permit. As will be noted, all of these cases involved attempts to enforce against a security holder obligations resulting from his purchase of securities issued in violation of a permit, or attempts by a security holder to avoid such obligations; none involved the rights of the security holder to retain the securities or to exercise the rights incident thereto. The holding of those cases is therefore limited to the proposition that such securities are voidable at the election of the purchaser. (5) *People v. Stewart,*[16] also cited by the court, was a criminal prosecution under Section 14 of the Corporate Securities Act[17] for knowingly offering a security for sale in nonconformity with the terms of a permit; the point at issue was the legality of the sale, and not the validity of the securities sold. (6) Finally, in *Barton v. El Encanto Apartments, Inc.,*[18] the court refused to enforce an executory contract to sell stock for which no permit had been obtained, without, of course, thereby passing on the validity of the shares, had they been issued.

Nor can the difference in result between the principal case and the cases decided by the California Supreme Court since 1932, in which the Eberhard doctrine is affirmed, be explained on the ground that Norman could not exercise the rights incident to his shares because he was in pari delicto with the issuer. Even though it be assumed that Norman acted in good faith, there is little doubt that he was as culpable as the issuing corporation, since he was its president and a director, conducted all of its affairs, and not only knew[19] the terms of the permit but participated in issuing the

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[13]Corporate Securities Act, stats. 1917, p. 673, as amended.
[14]219 Cal. 231, 25 P.2d 977 (1933).
[15]126 Cal.App. 677, 14 P.2d 1043 (1932).
[16]Supra, n. 9.
[17]Supra, note 13; presently Corp. Code § 26104.
[18]216 Cal. 500, 14 P.2d 501 (1932).
[19]For cases holding that mere knowledge of the violation of the permit requirements is not enough to cause a person to be in pari delicto with the issuer, see *Mary Pickford Co. v. Bayly Bros., Inc.,* 12 Cal.2d 501, 86 P.2d 102 (1939); *Austin v. Hallmark Oil Company,* 21 Cal.2d 718, 134 P.2d 777 (1943); *Randall v. Beber,* 107 Cal.App.2d 692, 237 P.2d 994 (1951); *Sampson v. Sapoznik,* 124 A.C.A. 792, 269 P.2d 205 (1954).

securities.[20] Under the doctrine of in pari delicto as heretofore understood, viz. that courts will deny *affirmative* relief to parties to a wrongful act who are equally to blame, Norman would have been deprived of his right to avoid the share purchase; but it is difficult to see how application of this doctrine can operate to void shares at the election of Reed, a third party.

Since the decision in the principal case does not mention the in pari delicto doctrine and could not, if the preceding reasoning is sound, be explained on the basis of that doctrine without broadening its scope from a rule which precludes rescission of the bargain by equally blameworthy parties to a rule which prevents enjoyment by such parties of the fruits of their wrongful acts, it may be assumed that the court would not have reached a different conclusion had the securities been held by an innocent purchaser.[21] The case therefore sub silentio overrules *Eberhard v. Pacific Southwest Loan & Mortgage Corporation*[22] and the line of cases following it[23] which held that securities issued in violation of or in nonconformity with the permit requirements of the Corporations Code are not void but are voidable at the option of the security holder and establishes a new rule which may or may not be the same as that in force before 1932.[24] In particular, it is not clear whether the securities are "void" only as between the security holder and interested third parties (the holding of the present case), or whether they are void also as between the security holder and the wrongdoing issuer. If the latter be the case, corporate directors may well wish to reexamine their position as fiduciaries of the shareholders before authorizing the payment of dividends or interest on any such securities or otherwise recognizing their

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[20] *Miller v. California Roofing Co.*, 55 Cal.App.2d 136, 130 P.2d 740 (1942).

[21] It is of course true that in finding the existence of pari delicto, the courts apply a different test in actions between the purchaser and the corporation than is applied in actions involving innocent third parties: *Miller v. California Roofing Co., supra*, n. 20. But this difference relates only to the finding of the existence of equal culpability and not to the consequences flowing therefrom.

[22] Supra, n. 7.

[23] Supra, n. 8.

[24] For an appellate court decision antedating *Reed v. Norman* in which it was held that stock issued without a required permit may be cancelled upon the application of other stockholders, see *Bernard v. Shure*, 111 Cal.App.2d 920, 245 P.2d 370 (1952). See, also, *Tevis v. Blanchard*, 122 A.C.A. 791, 266 P.2d 85 (1954) (hearing denied), an action on a promissory note issued to evidence a cash payment to the corporation for stock to be issued in future, for which no permit had been obtained. The District Court of Appeals reversed the trial court, which had allowed recovery on the note, and stated that plaintiff payee upon a proper showing could only rescind, sue for money had and received or for damages. This decision can only be reconciled with *Eberhard v. Pacific Southwest Loan & Mortgage Corporation*, wherein the holders of mortgage notes issued without a permit were allowed to affirm the contract and foreclose the mortgage, on the ground that in the *Eberhard* case the issuance of the securities was illegal, whereas in *Tevis v. Blanchard* their sale was illegal, a seemingly inconsequential difference.

owners as security holders. In addition, persons relying on corporate acts authorized or ratified by directors elected by the vote of such "void" shares may wish to reexamine the de jure status of such directors and the validity of such corporate acts.

Our courts have time and again declared it to be the policy underlying the permit requirements of the Corporations Code that the buying public should be protected against the wrongdoing issuer.[25] As stated in *Robbins v. Pacific Eastern Corp.*,[26] ". . . [that] act belongs to that type of statute which is aimed at one class for the protection of another class. In other words, the prohibitions and penalties of the Corporate Securities Act are leveled against the seller and not against the buyer. . . ." Under this policy an innocent holder of securities issued without a stock permit, or in nonconformity with its terms, had all the rights of a security holder and in addition had a "put" on the security at the price paid for it by him, for the period of the statute of limitations. While the principal case eliminates this lengthy period during which a corporation is at the mercy of such a security holder,[27] it does so by shifting all protection from the purchaser to the issuer's other security holders who, at least insofar as holders of corporate equity securities are concerned, already seem adequately[28] safeguarded by having a cause of action against the directors for breach of their fiduciary duty, where the issuance of the securities was for insufficient consideration or otherwise inimical to the interests of the corporation.[29]

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[25] *Walker v. Harbor Realty & Development Corporation*, 214 Cal. 46, 3 P.2d 557 (1931); *Miller v. California Roofing Co., supra* note 20; *Hardy v. Musicraft Records, Inc.*, 93 Cal.App.2d 698, 209 P.2d 839 (1949); *Silva v. Holme*, 109 Cal.App.2d 461, 241 P.2d 21 (1952); *Taormina v. Antelope Mining Corporation*, 110 Cal.App.2d 314, 242 P.2d 655 (1952). But see *Geisenhoff v. Mabrey*, 58 CA(2d) 481, 137 P.(2d) 36 (1943) stating that the Corporate Securities Act is designed to secure a sound corporate structure not only for the benefit of those to whom stock may be sold, but also for creditors; *Julian v. Schwartz*, 16 CA(2d) 310, 60 P.(2d) 887 (1936) stating that creditors or their representatives and others may assert the invalidity of securities issued in violation of the Corporate Securities Act.

[26] 8 Cal.2d 241, 277; 65 P.2d 42, 61 (1937).

[27] For a suggestion of how the same result could be obtained by legislation, see Dahlquist, op. cit. *supra*, note 8, at 709, where it is suggested that the period of the statute of limitations be limited to one year after discovery of the violation, and in any event, to three years after the bona fide issuance of the security. For a different solution, see Utah Code of 1953, Title 61, § 1-25, under which section no action may be brought by a purchaser more than two years after the date of sale, or, at any time, if the purchaser shall have refused to accept the voluntary offer of the seller to take back the security in question and to refund the amount paid by the purchaser, with interest.

[28] Unlike the cause of action under § 26100, however, the cause of action for breach of fiduciary duty is distinctive, so that the provisions of Corp. Code § 834 must be complied with.

[29] It may be argued that as long as purchasers in pari delicto have all the rights of security holders, the permit provisions of the Corporations Code can be circumvented by persons who act in concert in issuing securities to themselves. While this may be so, it would seem that the criminal sanctions of Corporations Code §§ 26103 and 26104 are sufficient to cope with such attempts.

Legal Education—The Survey Report

By Edgar A. Jones, Jr.

Assistant Professor of Law, University of California, Los Angeles. Member, Virginia State Bar, American Bar Association, American Law Institute

I doubt that anyone would contest the fact that professors and practitioners tend to approach joint discussions of legal education like a couple of wary old prospectors panning for gold along opposite banks of the same stream: each after the same product, each determined to find it in his own way, each suspicious of hindrance from the other. Yet it is clear enough to all of us today that such an attitude is uncomfortably out of place.

These comments, though in the nature of a book review, are designed primarily to use Dean Harno's Survey report[1] to point up that latter fact and to make a suggestion in regard to it. Secondarily, I hope to give just enough indication of the book's content to cause a responsible member of the bar to realize that he should read it, but not so much that his professional conscience will allow him to accept this review in lieu of the report. This is a book which, in addition to being discussed, should be read.

It is English usage apparently to refer to law professors as "academic lawyers." Our English brethren do not seem to be as sensitive as we to the nuances of the word "academic." In this intensely practical country we want *all* our lawyers—judges, professors and practitioners—to be "practical" men. "Justice is not a cloistered virtue," and we are properly concerned lest law professors evolve into a cloistered group of men separated from the realities of the world of clients and public service.[2] But we also know from observation that a "practical" man can often be equally as far removed from appreciating the complexity of reality. The cloister of over-simplification is quite as productive of unreality as is fixation upon abstract theory. Either kind of cloister is incompatible with professional education, and it is because thinking lawyers in and out of law schools have come to recognize the truth of this that much of the sound and fury that currently pre-

[1] LEGAL EDUCATION IN THE UNITED STATES. A Report Prepared for the Survey of the Legal Profession, by Albert J. Harno, San Francisco: Bancroft, Whitney Company, 1953. Pp. v, 211. $3.50. The work will be cited hereinafter as HARNO, REPORT.

Dean Harno practiced at the Los Angeles bar from 1914-17. He has taken a leading role in the activities of the organized bar, having been, for example, President of the Association of American Law Schools (1932), of the Illinois State Bar Association (1940-41), and of the National Conference on Uniform State Laws (1947-49), as well as Chairman, Board of Directors, American Judicature Society (1945-51), and member, Board of Governors, American Bar Association (1950-53).

[2] See HARNO, REPORT at 101.

occupies our journals in regard to legal education is beside the point.[3] The issue of importance is not whether but how to give law students both breadth and practicality of learning.[4] We want our law schools to send competent men to the bar with a perspective of reality which will prompt them to practice law and seek the improvement of the administration of justice[5] in a spirit of humble skepticism and with a dedicated sense of profession. To be competent they must be practical, and to be practical they must be skilled in both theory and technique.[6]

Yet I am confident that there are few law professors who would say that the law schools are presently fulfilling their potential in bringing such men to the bar.[7] Indeed, there is no first-rate law

[3]See *id.* at 50.
[4]See *id.* at 83.
[5]See *id.* at 122.
[6]See *id.* at 140 *et seq.*
[7]See *Id.* at 186. If anyone doubts this to be other than a rank understatement, I refer him to any issue of the Journal of Legal Education, published since 1948 as a quarterly by the Association of American Law Schools. The latest issue, for example, contains articles reflecting penetrating and constructive concern for the means and ends of legal education. As a sample, see Bingham, *Law Schools and the Future*, 6 J. Legal Educ. 486 (1954); Panel Discussion, *Legal Internships*, 6 J. Legal Educ. 504 (1954); Cowan, *The Design of Legal Experiment*, 6 J. Legal Educ. 520 (1954); Hanna, *Law Teachers in Convention Assembled*, 6 J. Legal Educ. 552 (1954); Schroeder, *Teaching Lawyers—Three Years' Experience*, 6 J. Legal Educ. 565 (1954).

faculty in America which is not actively and variously probing all the conceivable ways and means by which it may give its students a better grasp of the realities of the practice of law in our contemporary society.

Much of this seems so obvious as to be platitudinous. Yet, oddly enough, much of it also seems still to be in the area of controversy. Actually, it is disturbing to read and listen to current discussions of legal education because there is evidenced in them so little of a unitive sense of profession and so much of what is an artificial rather than a functional antagonism. But Dean Harno's study demonstrates that this need not surprise us even if we deplore it.[8] It is part of the history of legal education that there developed a rift between practicing and teaching lawyers. Fortunately for the profession, and thus for the public it serves, that historical rift has for some time been closing because of the temperate and constructive criticism of legal education by sensible men on both sides,[9] and this despite the occasional irate onslaught.[10] We have good cause to expect that the rift will eventually disappear.[11] It cannot happen too soon because it belongs in the anecdotal limbo of laymen judges, unlettered lawyers, unorganized bars and other impediments to an enlightened administration of justice.

If we are to get along with the unceasing business of improvement in the most intelligent manner, we must obviously pool our efforts.[12] Instead of being so intent on staking out preserves of supposed wisdom exclusive of the "uninitiated," we should be trying to build a common fund of experience and insight into which we may all to some degree become initiated. The mutual respect and profit to be gained from a serious program of coordination on a community scale[13] warrants the attention of the organized bar and the law faculties of this area. Can we not achieve something effective along that line in Los Angeles? It makes no difference from whence the stimulus may come. The important thing is that

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[8]See HARNO, REPORT at 100 *et seq.*

[9]See, for example, Crotty, *Who Shall Be Called to the Bar?* 20 Bar Exam. 173 (1951); Griswold, *The Future of Legal Education*, 5 J. Legal Educ. 438 (1953); Orshel, *The Teaching Approach of a Practicing Lawyer*, 5 J. Legal Educ. 515 (1953); Vanderbilt, *A Report on Prelegal Education*, 25 N.Y.U.L. Rev. 199 (1950).

[10]See, for example, Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?* 38 A.B.A.J. 907 (1952); Cantrall, *Practical Skills Must Be Taught in Law Schools*, 6 J. Legal Ed. 316 (1954). Cf. McClain, *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A.J. 120 (1953); Griswold, *Legal Education: Extent to Which "Know-How" in Practice Should Be Tought in the Law Schools*, 6 J. Legal Educ. 324 (1954).

[11]HARNO, REPORT at 101, 187 *et seq.*

[12]See, for example, *id.* at 72 *et seq.*

[13]See *id.* at 120.

there result a *sustained* effort at the local level to explore the problems of legal education[14] in terms of both means and ends on a cooperative basis.[15] I am confident that the time and talent of thoughtful people representative of the bench, the bar and the rostrum can be enlisted locally on a continuing and long-term basis. I am aware that this proposal, if it may be called that, is not novel, but I am quite hopeful that it may be timely. Dean Harno's book provides an excellent means for achieving at the outset a common appreciation of the problems involved in the very fact of legal education.[16] A great hindrance to productive cooperation has been the absence of just such a fund of sound criticism and good sense which all may readily share. No longer have we any excuse remaining to us.

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[14]Including, of course, so-called "pre-legal" education, see *id.* at 90 *et seq.*, and "post-graduate" education, see *id.* at 78, 115.
[15]*Id.* at 188.
[16]See particularly *id.* at 122 *et seq.*

Tax Reminder

TAX CONSEQUENCES OF PAYMENTS UNDER INTERLOCUTORY DIVORCE DECREE

Until recently the Internal Revenue Service has taken the position that for tax purposes a California interlocutory decree of divorce is equivalent to a final divorce decree. This view has taken concrete form in two rulings: (1) that payments to a wife pursuant to an interlocutory decree were includible as income to the wife and hence are deductible by the husband; and (2) that the husband and wife could not file a joint return. Considerable doubt has been thrown on the standing of these rulings by two recent decisions of the Tax Court, each affirmed by a court of appeals.

In *Commissioner v. Eccles,* 208 F.2d 796 (4th Cir. 1954), the Court of Appeals affirmed the Tax Court's decision that a husband and wife were entitled to file a joint return although a Utah interlocutory divorce decree had been granted. Then in *Commissioner v. Evans,* 221 F.2d 378 (10th Cir. 1954), the Court followed the *Eccles* case in holding that payments to the wife under a Colorado interlocutory decree were not includible as income to her. Accordingly, they would not be deductible by her husband. Both decisions rested upon the same ground. Under the applicable state law, the effect of the interlocutory decree was merely to declare that the plaintiff was entitled to divorce.

California taxpayers are not likely to be affected to as great a degree as others by the ultimate decision of the joint return

question; to a considerable extent, the community property laws bring about a similar result. Of more importance to California taxpayers, and particularly to counsel who negotiate and draft property settlement agreements, is the decision that support payments during the period following the interlocutory decree are not income to the wife. Because of the similarity of the divorce law of California to the Colorado law considered in the *Evans* case, local counsel should be cautioned not to rely on the earlier ruling of the Commissioner.

Most of the confusion in this area should be removed for future tax years if the 1954 Internal Revenue Code is enacted into law. The proposed Code would extend the application of the present alimony rule to periodic payments made under any written separation agreement, whether or not the parties have been separated by a court decree, with these qualifications: husband and wife must be living apart, and they must not have filed a joint return for the taxable year. Separated spouses who have not yet obtained a final divorce would also have the option of splitting their combined income by the use of a joint return.

Issue Editor — David Mellinkoff

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

The members of the **Minnesota** State Bar were recently polled on their attitude toward social security coverage for self-employed lawyers. Of the 1424 ballots returned only 181 opposed it on any basis, while 502 favored it on a voluntary basis only, 223 thought it should be on a compulsory basis only, and 379 wanted it and didn't care whether it was voluntary or compulsory. Remarks accompanying the ballots indicated that the younger, self-employed lawyers with families were particularly impressed with the immediate benefits afforded to widows and dependents and that their interest in retirement benefits was secondary.

* * *

The Board of Governors of the **Illinois** State Bar Association has approved a report of the Association's Section on Antitrust Law which recommends that Section 4 of the Clayton Act be amended to make treble damages discretionary rather than mandatory by providing (1) that a person injured as a result of the violation of the Antitrust Laws be allowed to recover compensatory damages and (2) that in the discretion of the court he be allowed an additional amount not in excess of twice his actual damages, but only in the event the defendant fails to prove that the violation was not wilful.

* * *

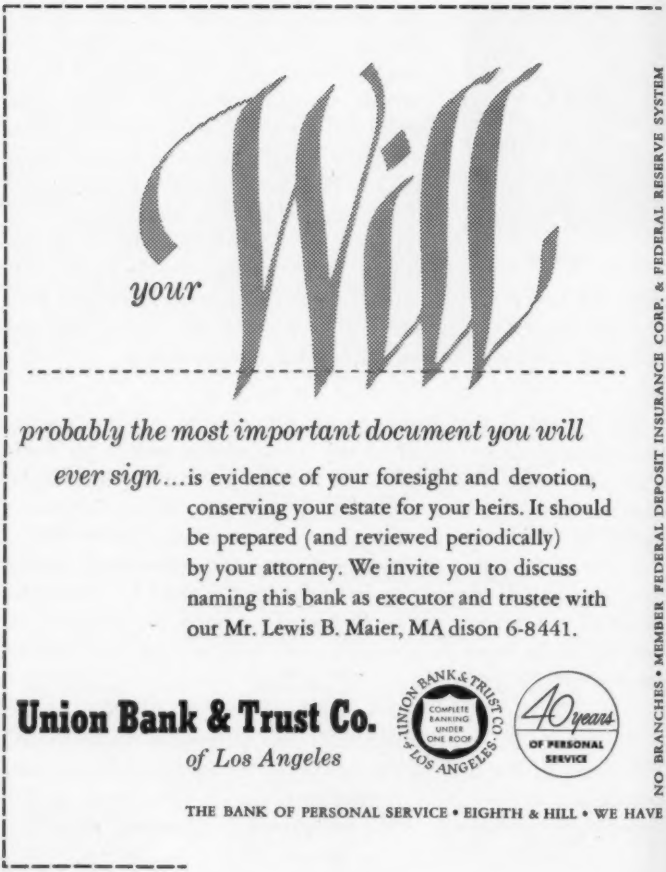
We are reliably informed that the otherwise conventional letterhead of the firm of Patterson & Patterson, attorneys and counselors of Phenix City, **Alabama,** carries this legend in the upper right hand corner: "We sell our services, not our souls."

* * *

The **Illinois** State Bar Association has purchased a three-story residence next door to the Supreme Court building in Springfield and will remodel it for use as the Association's headquarters. The funds necessary for this project have come from the allocation

THE ADVERTISEMENT

shown on this page is currently appearing in major Los Angeles newspapers and the Wall Street Journal.



As always, Union Bank reminds readers to consult with an attorney in the preparation and reviewing of wills.

of five per cent of annual dues income, the gifts of members and the proceeds of patron memberships. The Board of Governors is continuing to set aside five per cent of dues income in the building fund against the day when a modern headquarters building may be erected.

* * *

The Eighth Conference of the International Federation of Women Lawyers will be held in Helsinki, Finland, from July 9 to 14, 1954.

* * *

A recent number of *The Bar Bulletin* of the Boston Bar Association carries an article by a member of the **New Hampshire** Bar which chides his brethren in neighboring states, particularly those in Massachusetts, for preparing deeds of New Hampshire properties without knowing the essentials of conveyancing in that state. One of these essentials, we note, is that every party to a deed must affix a seal after his signature. Such half-way measures as imprinted seals or such lawyer-like devices as a recital of sealing will only get you into trouble. Apparently sealing wax and a signet ring are not required, however, for we are told that the use of wafer seals—the kind which you lick and stick on—is common practice.

* * *

"Lawyers may think they can wage a push-button 'public relations' campaign and by publicity purchase or gain good repute. They forget that public relations is just a name for what clients and other people think of lawyers, courts and the law. Public relations is no cure-all for the economic ills of the bar. Like a good name, good public relations must be earned in the last analysis by sound lawyer-client relationship." —*The Advocate* of the **Vancouver** Bar Association.

* * *

THE SOUTHERN LAWYER ON THE SOUTHERN GIRL

"And now, I say, what of the ladies? I'll tell ya. When God made the Southern woman He summoned His angel messengers and He commanded them to go through all the star-strewn vicissitudes of space and gather all there was of beauty . . . of bright-

ness and sweetness . . . of enchantment and glamor . . . and when they returned and laid the golden harvest at His feet, He began in their wondering presence the work of fashioning the Southern girl. He wrought with the gold gleam of the stars, with the changing colors of the rainbow's hues and the pallid silver of the moon. He wrought with the crimson that swooned in the rose's ruby heart . . . and the snow that gleams on the lily's petal. Then, glancing down deep into His own bosom, He took of the love that gleamed there like pearls beneath the sunkissed waves of a summer sea . . . and placed this love into the form He had fashioned . . . and all Heaven veiled its face, for lo . . . He had wrought the Southern girl . . ."—Attributed to R. M. Keely of the **Mississippi** Bar in a newsbroadcast by Frank Hemingway. No doubt it will be included in the next supplement to the Book of Genesis.

* * *

The Board of Governors of the **Iowa** State Bar Association is undertaking to secure an increase in probate fees and in other fees which are regulated by statute in that state.

* * *

"It is surprising how few lawyers are able to think clearly and talk plainly. Many are the learned men of rank and standing in the profession who are unable to state in sequence the simplest facts of the case. To tell the story of what happened is either beneath them or beyond them, and yet this is the principal part of oral argument."—Frederick E. Crane, former Chief Judge of the New York Court of Appeals.

* * *

"Chadwick, Chadwick & Mills announced recently that Stephen F. Chadwick, Jr., has become a member of the firm. We congratulate the new partner, but we wish to carp a bit about the lack of originality in this naming of Chadwicks. It used to be that there was 'Old Steve' and 'Young Steve,' and the present 'Old Steve' is still 'Young Steve' to us old gentlemen who knew the late Judge Stephen J. Chadwick. So now there is a 'Young Young Steve.' It's all pretty hard on us, and life is tough enough without this sort of thing."—The **Seattle** Correspondent to *Washington State Bar News*.

"A meeting between members of the Minnesota Editorial Association and a Public Relations Sub-Committee [of the **Minnesota** State Bar Association] revealed that much of the misunderstanding between the bar and the press exists because each group is unaware of the other's problems.

"In order to give newspapermen and lawyers the opportunity to meet each other and resolve their differences, a series of panel discussions has been planned at which the district bar associations are to be hosts to their local newspapermen."—*The Bench and Bar of Minnesota.*

* * *

A feature of the last annual dance of the **Akron** Bar Association was a gridiron presentation by the wives of the members. They called it "a girdle iron."

* * *

CANONS TO RIGHT OF HIM,
CANONS TO LEFT OF HIM.

An attorney was held to be disqualified to represent the plaintiffs in an antitrust suit where he had been employed for several years prior thereto by a firm which represented many of the defendants in antitrust and other matters. The court concluded there was no doubt he obtained much of the groundwork for the suit as a result of his prior employment. *Fisher Studio, Inc. et al. v. Loew's Inc., et al.*, E.D. of N.Y., CCH 1954 Trade Cases, Par. 67,725.

* * *

The University of **Colorado** is offering a two-week conference on Estate Planning beginning on August 30. It will be conducted by Professor A. James Casner of Harvard Law School.

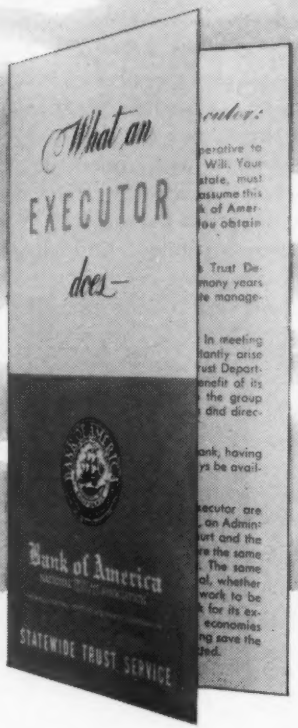
* * *

". . . [C]ourts sit to ascertain which client has the better cause, not the better lawyer."—Victor H. Kramer, p. 27, Proceedings of the Antitrust Section, ABA, April, 1954.

* * *

We are indebted to the recently published history of The Legal Aid Society of New York City by Harrison Tweed for the following extracts from an address to the Society by George Wharton

Choosing the right Executor is as important as consulting an Attorney when making a Will.



This pamphlet will help YOU help your client...

Our pamphlet, "What an Executor does," explains in detail the kind of service our bank can make available to your client as *Executor of his Will.* If you would like copies, simply write our Trust Department... or ask for them at any Bank of America branch.

Dynamic Trust Management

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION
MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

Pepper. Mr. Tweed refers to it as "the only humorous legal aid speech on record." In the course of it Senator Pepper said:

> "Now I am here tonight to plead for a type of legal relief, a type of legal aid, which has so far, so far as I know, been ignored or overlooked. Hitherto you have devoted your attention to the impecunious layman who needs legal assistance. But I want to make a plea on behalf of one of the neediest classes in the community, and that is the octogenarian lawyer who has witnessed the changes in law which have swept into the dustheap all that was most cherished in his store of legal knowledge, and has left him in the delicate position of attempting to maintain a position of respectability in the eyes of his junior partners.
>
> "Now you just take me as an illustration of this submerged class. I don't believe anybody in this rom is old enough to feel as I do the sense of frustration that comes when you are aware that all the things you gave your life for in the way of legal learning have become obsolete, and that you are attempting to appear equal to the occasion when the modern client is so ill-advised as to seek your advice.
>
> "Blackstone! I don't believe any of you here are overburdened with a knowledge of what the Commentaries contain. I can't forget it. I will put it to you, especially to the girls here,—how would you feel if suddenly you found yourself reciting the list of the incorporeal hereditaments? I don't believe most of the lawyers, or any of the women, know what an incorporeal hereditament is. Advowsons, tithes, commons, ways, offices, dignities, corodies, annuities, franchises, and rents. What do you think of them? That is the kind of stuff I have to carry around with me.
>
> "I want to get rid of all that stuff and learn something about taxation and all these interesting things that the young men know so much about and of which I know nothing. I don't believe any of you lawyers present lie awake at night classifying bills in equity, for instance, into original bills, and bills not original, and bills in the nature of original bills, and bills in the nature of bills not original. And what about this business of pleading? Who of you is kept awake at night thinking about the replication *de injuria sua propria absque tali causa?* Who of you cares anything about the special traverse and the different applications of the *absque hoc?* Those are things that bother me every day. . . ."

WHEN A BAND FIRST PLAYED IN HOLLYWOOD BOWL

A brass-band concert christened a sage-covered canyon "Hollywood Bowl" in 1921—when this Bank was completing its second decade of conducting a Trust service for Southern Californians.

TRUST DEPARTMENT

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OF LOS ANGELES

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Phone: MUtual 0211

Silver Memories

Compiled from the World Almanac and the L. A. Daily Journal of 1929, by A. Stevens Halsted, Jr.

A. Stevens Halsted, Jr.

Edward D. Lyman, member of the law firm of **Overton, Lyman & Plumb,** has been elected president of the Automobile Club of Southern California. **Harry J. Bauer,** attorney and director of the Southern California Edison Company, is first vice-president; **W. L. Valentine,** president of the Fullerton Oil Company, is second vice-president. The new board of directors consists of the foregoing and **Horace G. Miller, A. C. Balch, J. F. Sartori, Harry Chandler** and **H. W. Keller.**

* * *

President **Hoover** has issued an Executive Order that all future decisions of the Commissioner of Internal Revenue dealing with tax refunds in excess of $20,000 shall be open for public inspection.

* * *

Declaring that the high art of ambulance chasing has reached its highest development in Los Angeles, the Board of Governors of the State Bar has appointed a committee to probe into all details. The committee consists of **Chairman Dana R. Weller,** former Superior Court Judge; **Jefferson P. Chandler, B. J. Bardner, Henry K. Bodkin** and **Julius V. Patrosso.**

* * *

In London cries of "pronounce it" in the House of Commons greeted the attempts of Sir Robert Thomas, Liberal member for Anglesa, to obtain for the village of Llan-

fairpwllgyngwyllgogerychwyrndrobwllllandysiliogogogoch the services of a Welsh-speaking postmaster.

* * *

The earliest map of Los Angeles, that prepared by Lieut. **E. O. C. Ord** in 1849, shows Pershing Square as merely Block 15, and records of the Title Guarantee and Trust Company indicate that this block has never been deeded away by the city. A good-sized arroyo is shown on this old map as crossing across the southwest corner of Block 15. It starts in the hills to the north and cuts a big channel through the downtown section of Los Angeles, ending near Washington Boulevard. Oldtimers declare that before this arroyo was filled up, it had plenty of water every spring and also thousands of frogs and millions of mosquitoes. In fact Pershing Square in 1849 was thoroughly undesirable.

Near the northwest corner of the block ran the main highway of Los Angeles, as shown by Ord's Map. El Camino Viego left the present main street at the Nadeau Hotel, cut diagonally across the city blocks to Pershing Square, extended westward through the trickling alkali creek now known as Westlake Park, crossed the region of Bimini Baths, finally winding through Cahuenga Pass on the way north. One branch of this road, which was made a century and a half ago, ended at the Brea Pits where the inhabitants of the pueblo obtained their roofing material. Long after Ord made his survey and map, this road was Los Angeles' principal highway to the west and north, Ord's roads being ignored by the inhabitants.

* * *

Crowds traveled to Lake Nemi from Rome to view the first of Caligula's famous galleys to appear above the surface of the lake. They have been immersed 1,900 years.

* * *

W. Sumner Holbrook and **Leslie R. Tarr,** both former deputies in the County Counsel's office have resigned to engage in private practice under the name of **Holbrook, Taylor & Tarr. Joseph D. Taylor,** the third member of the firm, has been a member of the law and business administration faculties at Stanford University.

* * *

At his famous laboratory at West Orange, New Jersey,

Thomas A. Edison received from Secretary of the Treasury **Andrew W. Mellon** the gold medal which Congress voted to Edison for his inventive achievements. The Charge d'Affaires of the British Embassy returned the first phonograph, a box with a horn and wax cylinder, which Edison built 45 years ago and soon loaned to the South Kensington museum of London.

* * *

Dr. **Mansfield Robinson** sent from Albans, England, a wireless message to Compararu, the big-eared woman of Mars. The engineers listened on a 30,000 meter wave-length for a reply, but none was received for three days, at which time word came that Mars is a wicked planet, not fit to associate with this earth.

* * *

At Yonkers, N.Y. a City Judge exonerated a blind dog which had bitten a deaf man who bumped into the dog on the sidewalk.

* * *

After 4 days of make-believe air raids, London has been reported "vulnerable to real air attacks".

Opinions of Committee on Legal Ethics Los Angeles Bar Association

OPINION NO. 210
(October 22, 1953)

PLURAL OFFICES—SIGNS—ADVERTISING MINIMUM FEES. There is no impropriety involved in maintaining more than one bona fide office location. However, to advertise by signs stated or minimum fees is clearly unethical.

An inquiring attorney asks three related questions, which will be answered in the order in which they are presented to him.

Question No. 1: Whether a question of ethics would be raised if he were to rent desk space in two other locations in addition to the one he presently occupies, said space to be used for consultation purposes.

This question, considered alone, presents no ethical problem. It must be borne in mind, however, in considering the other two questions.

Question No. 2: Whether any question of ethics is raised because one of the additional locations would be in a real estate office and the other in a general merchandising office.

In connection with this question, it should be noted that the attorney's letter states that his office space will be independent of the other businesses, and his rent paid on a fixed monthly basis. In the absence of a more detailed statement of the circumstances, we infer that each of the additional locations will be a place where he or an associate admitted to the Bar can be found at regular or appointed times. If so, we think that there is no impropriety involved. Compare *A.B.A. Op. 249 (1942)*. However, if the circumstances should be otherwise, e.g., if he or someone properly representing him should not keep office hours at each location, our conclusion would be different. *See L.A.B.A. Op. 198 (1952)* in L. A. BAR BULLETIN for December, 1952. It is improper to have a "branch office" in a store managed by another and useful only to feed business to the lawyer. Drinker, *Legal Ethics (1953)*, p. 271. In other respects, he should see that his surroundings comport with his duty to maintain the dignity of the profession (A.B.A. Canon 29).

Question No. 3: Whether a question of ethics is raised if he places a sign, approximately 12" x 20", setting forth his name and professional title, and beneath same states "consultation fees $5.00 per one half hour," or other words to the effect that his are "minimum approved fees."

The question whether the size of the sign is proper is one of fact, the answer depending largely upon its setting and the dignity of its appearance. This Committee has opined that a sign designating law offices should be no larger and no more conspicuous than signs designating other law offices in the surrounding area. *L.A.B.A. Op. 206 (1953)*, in L. A. BAR BULLETIN for August, 1953. The test is whether the sign is intended and calculated to enable persons looking for a lawyer, already selected, to find him, or to attract the attention of persons who might be looking for a lawyer, not yet selected. Drinker, *Legal Ethics (1953)* p. 231.

The proposed reference on the sign to fees would be clearly improper. "It is incompatible with the maintenance of correct professional standards to employ commercial methods of attracting patronage." *People v. MacCabe*, 18 Colo. 186, 188, 32 Pac. 280, quoted in *A.B.A. Op. 191 (1939)*. See, also, *A.B.A. Ops. 152 (1936), 203 (1940), 151 (1936), 171 (1937), 28 (1930)*.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Article X, Section 3.)

OPINION NO. 211
(October 22, 1953)

ATTORNEYS FEES—WITHDRAWAL BY ATTORNEY. An attorney may decline to continue representing a client when the attorney and client cannot agree on the amount of the fee to be charged.

An attorney has requested the Committee's opinion on the following questions:

"Attorney A has been representing client X in pending litigation. At this point, client X asks attorney B also to act as attorney in the case. Attorney A had no definite understanding as to the hourly rate when he began representing client X, but during the period after the suit was filed he charged at the rate of $15 per hour.

When attorney B came in the case, he began charging at the rate of $25 per hour. Thereupon the original attorney A gave notice to the client that he would thereafter also charge

the client at the rate of $25 per hour. Query: (1) In the absence of an original agreement fixing an agreed rate, can an attorney raise his rates during the pendency of a case, where the client hires an additional attorney at a higher rate? (2) Is attorney A required from an ethical point of view to continue in the case at the lower rate, under the circumstances states?

Obviously, no question of lack of ability to pay arises, and there is a desire on the part of client X to have attorney A continue in the case at the lower rate, and a desire by attorney A to continue in the case at the higher rate, but to withdraw from the case if he cannot charge the higher rate."

It is difficult to arrive at an answer to the questions as put without having a more complete statement of facts. For instance, it does not appear from the statement at what stage of the litigation attorney B was called into the matter by the client, whether the client believed that A was young or inexperienced in the trial of lawsuits, what A's experience and reputation were, what B's experience and reputation were, what part A and B respectively would take in the balance of the litigation, and whether or not A generally made a practice of charging at a higher rate for services during trial than he did for services preliminary to trial. Any or all of such matters might well have a bearing upon the situation.

It would be consistent with the statement of facts to assume, and we do assume, that attorneys A and B are equally experienced and that their reputations at the Bar are substantially on a par, and that the client expects both attorneys to take an active part in the balance of the litigation.

There appear to be but two Canons of Professional Ethics which bear upon the questions, Canon 12, pertaining to the fixing of the amount of the fee, and Canon 44, pertaining to withdrawal from employment as counsel. Both Canons are rather broad and general in scope. Answering question (1) and assuming that no binding agreement to continue in the matter at the lower rate arose from the circumstances of the previous conduct of A, in our opinion it would not be unethical for A to charge a higher rate for his future services in the litigation than he had previously charged, so long as he made his intentions clear to the client, which he did. The client would be free to continue A's employment at the higher

fee or to discharge A if he did not care to continue the employment for that or any other reason.

As to the second question, and making the same assumptions, we are of the opinion that A should not be required to continue in the case at the lower rate, and could ethically withdraw from the matter if the client did not care to continue his employment at the higher rate, so long as the withdrawal would not prejudice the client's interests, which would not appear to be the result from the statement of facts given.

Canon 44, American Bar Association, states in part:

"The right of an attorney or counsel to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The lawyer should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect."

This opinion, like all other opinions of this Committee, is advisory only. (By-Laws, Article X, Section 3.)

OPINION NO. 215
(December 1, 1953)

ATTORNEY'S RIGHT TO ENGAGE IN ANOTHER BUSINESS—RIGHT TO MAINTAIN LAW OFFICE IN SUITE WITH INSURANCE BUSINESS

A PRACTICING LAWYER MAY NOT ACTIVELY ENGAGE IN THE INSURANCE BUSINESS ALONG WITH HIS LAW PRACTICE. A PRACTICING LAWYER MAY MAINTAIN HIS LAW OFFICE IN A SUITE OF OFFICES IN WHICH AN INSURANCE BUSINESS IS CONDUCTED SEPARATELY BY A LAYMAN

An attorney requests the Committee's opinion regarding the following questions:

"1. Is it a breach of ethics for a lawyer to engage in the insurance business along with his general practice?

2. Is it a breach of ethics or questionable if an insurance business is conducted by a member of a lawyer's family in the same suite of offices maintained by a lawyer?"

Question No. 1: The propriety of a practicing lawyer also carrying on a business in addition to his practice of law, either from his law office or elsewhere, has given rise to some difference of opinion by members of the Bar and Ethics Committees and is not without difficulty.

Appreciation of the Los Angeles Bar Association is extended to the members of the Federal Courts Criminal Indigent Defense Committee who are contributing their services and time on behalf of the Association and the Bar in general. Those who volunteered to serve during the month of June, 1954, are as follows:

ALBERT A. ADAMS	WILLIAM SARNOFF
THEODORE A. CHESTER	BEN SUSSMAN
ELAINE FISHELL	ROY B. WOOLSEY
RUSSELL E. HOLT	DUDLEY K. WRIGHT, JR.
CHARLES H. OLDER	GORDON K. WRIGHT
RICHARD F. RYAN	LOYD WRIGHT, JR.

JOSEPH STELL, *June Committee Chairman*

The Canons of the American Bar Association do not necessarily prohibit a lawyer from engaging in another occupation at the same time. However, depending upon the circumstances involved, unethical practices may result in such a situation. No one would doubt the propriety of a practicing lawyer simultaneously engaging in such occupations as teaching or farming. Difficulty arises when the other occupation, although theoretically and professedly distinct, is one closely related to the practice of law, particularly where the other business is conducted from a law office. Thus it has generally been considered ethically improper, under Canon 27, A.B.A., to conduct a supposedly independent business such as a collection agency, estate planning service, or an insurance adjustment bureau, the reasons being that the performance of such services by a lawyer constitutes professional employment and the conduct of the other business would normally feed law business to the lawyer and at least indirectly constitute solicitation of law business and advertising.

In its Opinion 57, the Committee on Professional Ethics, American Bar Association, held that it was unethical for a lawyer to devote part of his time to managing a bureau for adjustment of insurance claims on the grounds that Canon 27, prohibiting solicitation and advertising, would be violated and that the adjustment

of insurance claims by a lawyer is professional employment, since in performing such a service the lawyer's professional skill and responsibility as a lawyer is engaged. Such conduct, under certain circumstances, may extend beyond the bounds of merely unethical practice and subject the lawyer to disciplinary action for violation of Rule 2, Rules of Professional Conduct, State Bar of California. In Librarian v. State Bar, 25 Cal. (2d) 314, our Supreme Court, in holding that Rule 2 had been violated by a lawyer maintaining signs on his residence-office "Lawyer" "Income Tax Expert" and "Notary" said, page 317: "One who is licensed to practice as an attorney in this state must conform to the professional standards in whatever capacity he may be acting in a particular matter."

In Opinion No. 142 (1943) this Committee held that it is unethical and improper for a practicing attorney to engage in the insurance brokerage business, on the ground that the services customarily rendered by an insurance broker would constitute professional services if rendered by an attorney. Of necessity an insurance broker customarily examines insurance contracts and determines whether they afford the coverage his client requires. Further, in the event of a loss, it is the function of a broker to assist in adjusting the claim. An insurance broker considers and advises his client as to the coverage afforded by various types of contracts and sometimes advises him with respect to tax matters in connection therewith. If a practicing lawyer were to render such services he would be engaged in a professional capacity. If his law office were to be maintained separately from his insurance office, such objection would still apply.

Question No. 2: In our opinion, it would not be unethical for a lawyer to have a law office in the same suite as an insurance business conducted by a layman, whether the insurance business was conducted by a member of the lawyer's family or otherwise, provided that the insurance business was not used directly or indirectly as a means of soliciting law business for the lawyer and was in fact conducted wholly separate and apart from the lawyer's practice.

This Opinion, like all Opinions of this Committee, is advisory only. (By-Laws, Article X, Section 3).